90-02912/

Nova Scotia

February 7, 1990

We are pleased to enclose the response of the Government of Nova Scotia to the Report and Recommendations of the Royal Commission on the Donald Marshall, Jr. Prosecution.

The Government invited this exhaustive review and now accepts the challenge of implementation.

We look forward to continued improvement of the justice system.

Sincerely,

Thomas J. McInnis
Attorney General

Neil J. LeBlanc
Solicitor General

GOVERNMENT OF NOVA SCOTIA RESPONSE

TO THE RECOMMENDATIONS OF THE

ROYAL COMMISSION ON THE DONALD MARSHALL, JR. PROSECUTION

Righting the Wrong: Dealing With the Wrongfully Convicted

1. Review body

We recommend that the provincial Attorney General commence discussions with the federal Minister of Justice and the other provincial Attorneys General with a view to constituting an independent review mechanism - an individual or a body - to facilitate the reinvestigation of alleged cases of wrongful conviction.

Response:

The Government accepts this recommendation.

The Attorney General has written to all Federal/Provincial/Territorial Attorneys General and Ministers of Justice to express the Government's desire to commence discussions respecting the independent review mechanism recommended by the Commission. He has also asked for this topic to be placed on the agenda of the next meeting of Federal/Provincial/ Territorial Attorneys General and Ministers of Justice.

2. Powers of review body

We recommend that this review body have investigative power so it may have complete and full access to any and all documents and material required in any particular case, and that it have coercive power so witnesses can be compelled to provide information.

Response:

The Government accepts this recommendation.

The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to consider investigative power for the independent review body.

3. Judicial Inquiry to consider compensation claims

We recommend that when a person is found to have been wrongfully convicted, a judicial inquiry be constituted to consider any claim for compensation. The person or persons appointed to this inquiry should be completely independent of any involvement with the administration of justice in the province which gave rise to the wrongful conviction.

Response:

The Government accepts this recommendation.

A judicial inquiry will be constituted to consider claims for compensation arising from wrongful conviction and imprisonment.

The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to amend the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons to incorporate aspects of this recommendation which are not already covered.

4. No limit on compensation amount

We recommend that there be no pre-set limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim.

Response:

The Government accepts this recommendation.

This policy will be implemented immediately in Nova Scotia. The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to incorporate this policy in the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons.

5. Factors to be considered

We recommend that any judicial inquiry be entitled to consider any and all factors which may have given rise to the wrongful conviction, imprisonment or the continuation of that imprisonment.

Response:

The Government accepts this recommendation.

This policy will be implemented immediately in Nova Scotia. The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to incorporate this policy in the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons.

6. Legal fees and disbursements

We recommend that appropriate legal fees and disbursements incurred by or on behalf of the wrongfully convicted person be paid as part of the inquiry's expenses.

Response:

The Government accepts this recommendation.

This policy will be implemented immediately in Nova Scotia. The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to incorporate this policy in the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons.

7. Report to be public

We recommend that the inquiry report become a public document.

Response:

The Government accepts this recommendation.

This policy will be implemented immediately in Nova Scotia. The Attorney General will urge the Federal/Provincial/Territorial Attorneys General and Ministers of Justice to incorporate this policy in the Federal/Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons.

8. Marshall compensation

We recommend that Government recanvass the adequacy of the compensation paid to Marshall in light of what we have found to be factors contributing to his wrongful conviction and continued incarceration.

Response

The Government accepts this recommendation.

This process is already underway.

Visible Minorities in the Criminal Justice System

9. Policy on Race Relations

We recommend that the Departments of the Attorney General and Solicitor General adopt and publicize a Policy on Race Relations that has as its basis a commitment to employment equity and the elimination of inequalities, based on race, in these Departments and their agencies and the reduction of racial tensions between these Departments and the communities with which they interact.

Response:

The Government accepts this recommendation.

Policymakers, legislators and Government have a responsibility to create a climate in which racism is intolerable. Increased representation of visible minorities within the Departments of Solicitor General and Attorney General will assist in making the justice system more responsive to minority groups. These Departments will adopt a policy on race relations to underscore Government's commitment to employment equity and a harmonious relationship between the justice system and all communities of Nova Scotia.

10. Cabinet Committee on Race Relations

We recommend that a Cabinet Committee on Race Relations be established which would include the Attorney General and Solicitor General. This Committee should meet regularly with representatives of visible minority groups in order to assure the input of these groups in matters of criminal justice.

Response:

The Government accepts this recommendation.

The Government will establish a Cabinet Committee on Race Relations. Permanent members will be the Premier, the Minister responsible for the Human Rights Act, the Attorney General, the Solicitor General, the Minister of Community Services, the Minister of Education, the Minister responsible for Multiculturalism, and the Minister responsible for Civil Service Commission.

This Cabinet Committee will meet regularly with the leadership of minority communities and the Human Rights Commission in order to develop strategies to improve race relations in the Province and ensure that Government minority initiatives – including those outlined in this response -- are implemented fully and sensitively.

11. Dalhousie Law School's minority admissions program

We recommend that the Dalhousie Law School's minority admissions program for Micmacs and indigenous Blacks receive the financial support of the Governments of Canada and Nova Scotia, and the Nova Scotia Bar.

Response:

The Government accepts this recommendation.

In 1989, the Government contributed to the minority admissions program at Dalhousie Law School. Increased financial support will be provided during the next academic year. The Government will develop a program of summer employment in the Department of the Attorney General for participants in the program.

12. Appointment of judges and board members

We recommend that Governments consider the needs of visible minorities by appointing qualified visible minority judges and administrative board members whenever possible.

Response:

The Government accepts this recommendation.

The Government is making greater efforts to involve all citizens in boards and tribunals. Appointments are made from among applicants who respond to newspaper advertisements. This has opened up the process to persons whose interest was not previously known to Government.

In the case of minorities a special effort to develop a roster of qualified persons is required. The Government will make this effort so that boards and tribunals -- especially those with special roles in respect of disadvantaged groups -- will benefit from minority perspectives.

13. Programs for law students, lawyers, judges

We recommend that the Dalhousie Law School, the Nova Scotia Barristers Society and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities, and encourage sensitivity to minority concerns for law students, lawyers and judges.

Response:

The Government endorses this recommendation.

The Government will support these courses and programs, and will encourage Government lawyers, including Crown prosecutors, to participate in them.

14. Programs for Crown prosecutors

We recommend that the Attorney General establish continuing professional education programs for Crown prosecutors, which would include:

(a) an exposure to materials explaining the nature of systemic discrimination toward Black and Native peoples in Nova Scotia in the criminal justice system; and

(b) an exploration of means by which Crown prosecutors can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system.

Response:

The Government accepts this recommendation.

In cooperation with the Director of Public Prosecutions, the Government will establish educational programs to sensitize and attune Government lawyers, including Crown prosecutors and other law enforcement and justice personnel, to the nature of systemic discrimination and the means by which its effects may be reduced in this Province.

15. Police training

We recommend that training for all police officers, both at the intake level and as continuing education, include content on police/minority concerns and sensitivity to visible minority issues.

Response:

The Government accepts this recommendation.

Although courses on race relations and multiculturalism are offered at the Atlantic Police Academy, they have been undersubscribed by police forces. The Solicitor General's Task Force on Municipal Police Training is recommending that the quality of these courses be improved in consultation with minority group representatives and that they form part of the compulsory training for recruits and serving officers.

16. Public Legal Education programs and funding

We recommend that the Public Legal Education Society consult and work with Native and Black groups to develop and provide legal materials and services for minority users. These initiatives cannot be undertaken without specific funding. This should be provided where necessary by Government.

Response:

The Government endorses this recommendation.

The Government supports the activities of the Public Legal Education Society and has committed funding to the Society. The Government, in consultation with Native and Black groups, will provide additional financial assistance to enable the Public Legal Education Society to develop and provide legal materials and services for minority users.

17. Alternative Penalty Act

We recommend that the Government immediately proclaim the Alternative Penalty Act, S.N.S. 1989, c.2, and that regulations which address the particular needs of Native and Black offenders be enacted.

Response:

The Government accepts this recommendation.

The Alternative Penalty Act has been proclaimed, effective February 1, 1990. The Fine Option Program allows an individual to satisfy a fine by performing community work.

Because work placements are community based, the unique needs of Black and Native offenders will be accommodated.

18. Diversion programs

We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the Criminal Code.

Response:

The Government endorses this recommendation in part.

The Government recognizes the value of adult diversion, but a program of this nature must be universal and versatile enough to address the special needs of all Nova Scotians.

Development of adult diversion programs requires federal legislation and guaranteed federal funding.

19. Correctional programs

We recommend that the Department of the Solicitor General of Nova Scotia take steps to, and urge the federal correctional authorities to take steps to:

(a) immediately implement programs to recruit and hire more Natives and Blacks in professional and non-professional positions in the correctional service;

(b) implement ongoing education and training programs designed to sensitize correctional workers at all levels to the particular needs of Native and Black offenders based on their racial and cultural background;

(c) indicate to all correctional workers that discriminatory conduct (including racial slurs) against Natives and Blacks will not be tolerated and may result in adverse employment consequences;

(d) offer institutional programs emphasizing the educational, cultural and religious needs of Native and Black offenders in institutions where a significant number of Natives and Blacks are incarcerated; and

(e) support rehabilitation programs for Native and Black inmates and former inmates which take into account their background and needs.

Response:

The Government accepts this recommendation.

(a) The Department of the Solicitor General has successfully recruited a number of Black employees to work in the correctional system. Efforts to recruit Native employees have not been as successful. Government is committed to continue working with Native leaders to develop an effective strategy for recruiting Natives as employees within the correctional system.

(b) Although the current training curriculum includes interpersonal communications courses which address these issues, the content specifically addressing the needs of Native and Black offenders is deficient. The Department of Solicitor General will expand its current course offerings in consultation with minority group representatives.

(c) Official policy and guidelines on racial stereotyping will be incorporated in a Code of Conduct and distributed to all provincial correctional workers.

(d) The Department of the Solicitor General will provide rehabilitative programs to address the special needs of all offenders. Freedom of religious practice is currently guaranteed under the Corrections Act regulations. The Department will consult with Native leaders to ensure that educational and cultural programs offered within correctional institutions address the needs of Native inmates.

(e) Government will urge the Federal Government to support rehabilitative programs for Native and Black ex-inmates.

Nova Scotia Micmac and the Criminal Justice System

20. Native Criminal Court

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia, initially as a five-year pilot project, incorporating the following elements:

(a) a Native Justice of the Peace appointed under Section 107 of the Indian Act with jurisdiction to hear cases involving summary conviction offences committed on a reserve;

(b) diversion and mediation services to encourage resolution of disputes without resort to the criminal courts;

(c) community work projects on the reserve to provide alternatives to fines and imprisonment;

(d) aftercare services on the reserve;

(e) community input in sentencing, where appropriate; and

(f) court worker services.

Response:

The Government accepts the intent of this recommendation.

In late 1989, discussions with Native leaders on a wide range of justice issues, including community courts, were initiated.

Community based justice systems are a promising development. However, the community court must be developed in consultation with the community it serves. The Native Justice of the Peace under Section 107 of the Indian Act is but one model. The Government wishes to develop the best alternatives for Nova Scotia.

However, like the Commission, the Government does not favour an autonomous Native legal system for Nova Scotia Micmac. As the Commission states:

> We wish to make it clear that the Native Criminal Court we propose will administer the same law as applies to all other Canadians. We do not propose a separate system of Native law, but rather a different process for administering on the reserve certain aspects of the criminal law. The laws enacted by Parliament and the Legislative Assembly will continue to apply to Natives, and the safeguards for accused persons under the Charter will apply in any Native Criminal Court. (Volume 1, p. 168.)

A community based court, which will develop expertise in alternative dispute resolution, will serve as a model which may also be introduced to assist other isolated and/or economically disadvantaged communities.

21. Native Justice Institute

We recommend that a Native Justice Institute be established with Provincial and Federal Government funding to do, among other things, the following:

(a) channel and coordinate community needs and concerns into the Native Criminal Court;

(b) undertake research on Native customary law to determine the extent to which it should be incorporated into the criminal and civil law as it applies to Native people;

(c) train court workers and other personnel employed by the Native Criminal Court and the regular courts;

(d) consult with Government on Native justice issues;

(e) work with the Nova Scotia Barristers Society, the Public Legal Education Society and other groups concerned with the legal information needs of Native people; and

(f) monitor the existence of discriminatory treatment against Native people in the criminal justice system.

Response:

The Government accepts the intent of this recommendation.

A Native Justice Institute may not be the most appropriate mechanism to achieve these goals. These functions should be performed at the community level rather than by a central, academic institute. Community justice committees should play a larger role than proposed by the Commission, as they can best channel and coordinate community needs and concerns into the community court, and consult with Government, the Nova Scotia Barristers' Society, and the Public Legal Education Society on justice issues and the needs of Native people.

The Tripartite Forum (Recommendation 22) will provide the necessary coordination.

22. Tripartite forum on Native issues

We recommend that a tripartite forum (Micmac/Provincial/Federal Government) similar to the Ontario Indian Commission be established to mediate and resolve outstanding issues between the Micmac and Government, including Native justice issues.

Response:

The Government accepts this recommendation.

Consultations among Native leaders and representatives of the Provincial and Federal Governments have already commenced.

23. Micmac interpreters

We recommend that all courts in Nova Scotia have the services of an on-call Micmac interpreter for use at the request of Micmac witnesses or accused.

Response:

The Government accepts this recommendation.

The Department of the Attorney General currently pays for interpreters for witnesses and all accused persons who might otherwise be unable to participate and understand their trial.

24. Native court workers

We recommend that the Provincial and Federal Governments, in consultation with Native communities, work together to establish a Native court worker program, as an immediate first step in making the criminal justice system more accessible to Native people.

Response:

The Government accepts the intent of this recommendation.

The Native Court Worker Program will be discussed by the Tripartite Forum. Consultations with Native leaders of Nova Scotia has led Government to conclude that other approaches may be more appropriate in this Province.

Increased funding to Nova Scotia Legal Aid for purposes of hiring Black and Native caseworkers will assist those communities and others in dealing with the justice system.

25. Sittings of Provincial Courts on reserves

We recommend that the Chief Judge of the Provincial Court take steps to establish regular sittings of the Provincial Courts on Nova Scotia reserves.

Response:

The Government endorses this recommendation.

The Department of the Attorney General will cooperate fully with the Provincial Court and Native communities to facilitate this.

26. Legal Aid funding

We recommend that Nova Scotia Legal Aid be funded to permit them to:

(a) specifically assign lawyers to work with Native clients to develop a specialization with respect to the concerns of Native people; and

(b) hire a Native social worker/counsellor to, among other things, act as a liaison between Native people and the Legal Aid service.

Response:

The Government endorses this recommendation.

The Government will provide funding to the Nova Scotia Legal Aid Commission for a social worker/councillor.

27. Liaison with bar

We recommend that a program of ongoing liaison between the bar - prosecutors, private defence and legal aid - and Native people, both on and off reserve, be established through the Nova Scotia Barristers' Society. The Society must also educate its members concerning the special needs of Native clients.

Response:

The Government endorses this recommendation.

We endorse the efforts of the Nova Scotia Barristers' Society in this area and pledge cooperation with those efforts to improve the level of knowledge of issues affecting visible minorities among all practising lawyers. Government lawyers will actively participate in this process.

28. Native constables

We recommend that the RCMP and municipal police forces, where applicable, take immediate steps to recruit and hire Native constables.

Response:

The Government endorses this recommendation.

The RCMP has initiated special measures to increase the level of Native participation within its ranks. The Commissioners of the RCMP have established a national recruiting team and other outreach programs to attract youth to a career in law enforcement. The Department of the Solicitor General will encourage municipal departments to implement similar recruiting programs.

29. Native Justice Committee

We recommend that the advice of leaders chosen by the Native community and sitting as a Native Justice Committee be sought by judges in sentencing Natives, where possible.

Response:

The Government accepts this recommendation.

The Government agrees with the Commission that "some degree of control should be accorded to Native people in respect of their institutions of justice". Justice Committees are crucial to the success of community court and policing initiatives and the development of diversion, parole and fine option programs which meet Micmac concerns and reserve conditions.

The Department of the Solicitor General will instruct probation officers, who are preparing reports for judges for sentencing, to consult with the Justice Committee, community elders, or board councillors and incorporate their views in the report.

30. Probation and aftercare

We recommend that the Provincial and Federal Governments facilitate and finance mechanisms by which Native people can have more control over the treatment of Natives convicted of an offence, such as establishing a probation officer capability and community-based aftercare services on-reserve.

Response:

The Government endorses the intent of this recommendation.

An increased probation officer capability should be established on reserves to address incremental services which reflect the unique cultural needs of Native offenders. The Department of the Solicitor General will establish this program within its existing organizational structure. The Government will urge federal authorities to establish community-based aftercare services which address the unique needs of Native offenders.

Blacks in the Criminal Justice System

31. Amendments to Human Rights Act

We recommend that the Nova Scotia Human Rights Act *be amended:*

(a) to require that an annual report of the Commission's activities be submitted to the Minister who shall place the report before the Legislative Assembly;

(b) to specifically state that those parts of the justice system under provincial jurisdiction are included in the Act's coverage;

(c) to provide that where the Commission is unable to settle a complaint, and where the Commission recommends the appointment of a Board, it shall report to the Minister who shall appoint a Board of Inquiry (Section 25 now gives the Minister a discretion as to whether a Board should be appointed); and

(d) to establish within the Commission a Race Relations Division reporting to the Commission through one or more members, at least one of whom shall be full time and designated as Race Relations Commissioner.

Response:

The Government endorses the intent of this recommendation.

The new Cabinet Committee on Race Relations will immediately begin dialogue with the leadership of minority communities on justice issues. Based on both the Commission's findings and the research, further consultation is required to fully address the perceptions within minority communities and the needs addressed by the Commission.

The Government will establish a Race Relations Division of the Human Rights Commission.

32. Funding for Human Rights Commission

We recommend that the Human Rights Commission be provided with sufficient resources to enable it to effectively carry out its present mandate and further responsibilities added by our recommendations, and in particular to enable it:

(a) to retain independent legal counsel; and

(b) to engage in an active public awareness program, particularly in the area of Native and Black concerns.

Response:

The Government accepts the intent of this recommendation.

If after community consultation it is concluded an expanded role for the Human Rights Commission is appropriate, then adequate resources to fulfill that role will be provided.

33. Responsibility of Chief Judges

We recommend that the Chief Justices and the Chief Judges of each court in Nova Scotia exercise leadership within his or her area of responsibility to ensure fair treatment of visible minorities in the criminal justice system.

Response:

The Government endorses this recommendation.

This matter will be placed on the agenda of the next meeting between the Attorney General and the Chief Justices and Chief Judges of Nova Scotia.

34. Legal Aid funding for Black clients

We recommend that, because of the dependence of Black clients on legal aid services, the funding of legal aid in Nova Scotia be re-examined to ensure that there are sufficient counsel to properly serve minority clients and to engage in proactive programs in minority communities.

Response:

The Government accepts this recommendation.

The Attorney General will ask the Nova Scotia Legal Aid Commission to re-examine its structure and funding with respect to service to minority clients and in minority communities. The Government will provide additional funding to enhance that service where necessary.

Administration of Criminal Justice

35. Director of Public Prosecutions

We recommend that:

(a) there be created by statute the office of Director of Public Prosecutions, and that the holder of this office:

(i) be a member of the bar of Nova Scotia (or equivalent) for a minimum of ten years;

(ii) be appointed by the Governor in Council after consultation with the officers of the Nova Scotia Barristers Society and with the two Chief Justices of the Superior Courts in Nova Scotia, for a term of ten years, with eligibility for re-appointment;

(iii) be removable for cause by the Governor in Council only after a resolution from the provincial Legislature approving such action;

(iv) be paid and given employment benefits not less than those of a judge of the County Court of Nova Scotia, and have the status of a departmental "deputy head";

(b) the duties and responsibilities of the Director of Public Prosecutions include:

(i) the exercise of all of the functions of the Attorney General as agent and deputy of the Attorney General in relation to the administration of criminal justice in the province, subject to paragraph (c) below; and in particular;

(ii) regular consultation with the Attorney General concerning all aspects of public prosecution and the administration of the prosecution service;

(iii) the direction of the prosecution service of the province, including supervision of those functions presently exercised by the Director (Prosecutions) and the Director (Criminal);

(iv) the presentation of an annual report to the Attorney General on the conduct of public prosecutions in the province, which shall describe, among other matters, any personal interventions by the Attorney General pursuant to paragraph (c)(i);

(c) the Attorney General continue to exercise the duties and responsibilities traditionally accorded to that office in relation to the administration of criminal justice, subject only to the limitations which follow:

(i) *where he or she deems it necessary, the Attorney General may intervene in a prosecution contrary to the advice of the Director of Public Prosecutions but only through the use of written instructions which shall be published within 30 days of their issuance in the* Royal Gazette, *or following expiry of the appeal period, whichever is later;*

(ii) *the Attorney General shall, after consultation with the Director of Public Prosecutions, issue guidelines for the exercise of prosecutorial discretion which shall be tabled in the provincial legislature as soon as is practicable after their issuance; and*

(iii) *the Attorney General shall table in the provincial legislature as soon as is practicable the annual report received from the Director of Public Prosecutions pursuant to paragraph (b)(iv).*

Response:

The Government accepts the intent of this recommendation.

The Government has recently announced the appointment of a Director of Public Prosecutions. The Director is responsible for all prosecutions and appeals conducted on behalf of the Crown. The Director of Public Prosecutions may consult with the Attorney General when he deems it appropriate. However, any direction the Attorney General gives the Director with respect to any prosecution must be in writing and published. The Director will report annually to the House of Assembly.

The Attorney General, as the chief law officer of the Crown, is accountable to the Legislature and ultimately to the people for his actions and those of the Director of Public Prosecutions. The principle of ministerial responsibility does not compromise the degree of independence enjoyed by the Director of Public Prosecutions. Nova Scotia has adopted the Commonwealth of Australia model which the Commissioners praise. It permits the Director of Public Prosecutions to exercise the maximum degree of independence when making prosecutorial decisions while maintaining the principle of ministerial responsibility.

The Director has been appointed by the Governor in Council and holds office during good behaviour. In addition to the Order in Council, there is a binding contract in place which the Government cannot unilaterally change. The contract safeguards the independence of the Director of Public Prosecutions while at the same time securing his office.

36. Policy statement on the role of police

We recommend that the following policy statement be included in the Crown Prosecutors' Manual:

(a) in the investigation of offences prior to the laying of charges, it is understood that the police officers are to carry out their duties in accordance with the law and general standards, practices and policies established by the Solicitor General, but in consultation with the appropriate Crown prosecutor where necessary; and

(b) after the laying of charges, police shall carry out any investigations in accordance with the instructions of the Attorney General or appropriate prosecutor with a view to preparation of the case for presentation in court.

Response:

The Government accepts this recommendation.

This policy statement will be forwarded to prosecuting officers by the Attorney General and will be included in a Crown Prosecutors' Manual.

37. Laying of charges

We recommend that:

(a) police officers be informed in general instructions from the Solicitor General that they have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment, subject to the Crown's right to withdraw or stay the charges after they have been laid;

(b) within each police force there be a clear written policy on resolving disagreements between the police and Crown over the laying of charges, and that such policy provides that no charge shall be laid contrary to the advice of the Crown unless and until discussions have been held between the highest levels of police and Crown;

(c) within each police force and within the Department of Attorney General there be a clear written directive requiring absolute confidentiality and secrecy of the identity of persons being investigated other than on a need to know basis within the police force and the Department;

(d) prosecutors be informed in general instructions from the Attorney General that police officers have the right and the duty to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges after they have been laid;

(e) police officers and Crown prosecutors be informed by their respective departmental superiors that police are encouraged to consult with the appropriate prosecutor concerning the drafting of informations, where such consultation might be thought useful; and

(f) the Attorney General institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward.

Response:

The Government accepts this recommendation.

The Solicitor General will issue the following policy:

(a) the police have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment, subject to the Crown's right to withdraw or stay the charges after they have been laid;

(b) all police departments must implement the following protocol for the resolution of disputes between police and Crown over the laying of criminal charges:

(i) no charge shall be laid, contrary to the advice of a Crown prosecutor, until discussion concerning the matter has taken place between the police department and the Crown prosecutor,

(ii) if there is no resolution of the disagreement at that level, the matter must be referred to a senior police official of the department who will discuss the matter with the Regional Crown Prosecutor,

(iii) if, following such discussion, the police remain of the view that a charge is warranted, the charge should be laid;

(c) no police official shall disclose the fact of a police investigation, other than on a need to know basis within the police department so as to maintain confidentiality and secrecy respecting the identify of a person who is the subject of an investigation;

(d) police officers are to be encouraged to consult with a Crown prosecutor concerning the drafting of informations, where such consultation might be useful.

The Attorney General will issue the following policy statement:

(a) (i) in the event of a disagreement between a Crown prosecutor and a police officer respecting the laying of a charge, the matter is to be referred to the Regional Crown Prosecutor,

(ii) in the event that disagreement remains between the police department and the Regional Crown Prosecutor respecting the laying of a charge, the Regional Crown Prosecutor shall refer the matter to the Director of Public Prosecutions for review,

(iii) it is recognized that the police have the right and responsibility to lay an information charging an individual with an offence, subject to the Crown's right to withdraw or stay a charge after it has been laid;

(b) no Crown prosecutor shall disclose the fact of a police investigation, other than on a need to know basis within the prosecution service, so as to maintain confidentiality and secrecy respecting the identity of a person who is the subject of a police investigation;

(c) Crown prosecutors are to respond to any request from the police for consultation concerning the drafting of an information charging a person with an offence.

With regard to post-charge screening, a pilot project will be established at an appropriate location.

38. Factors to be considered when stopping prosecutions

We recommend that:

(a) the Attorney General promulgate a clearly stated policy concerning the public interest factors which should, and should not, be considered in deciding whether to undertake or stop a prosecution even in the face of evidence which could sustain a conviction;

(b) the factors which might arise for consideration in determining whether the public interest requires a prosecution, include:

(i) the triviality of the alleged offence or that it is of a "technical" nature only;

(ii) the age, physical health, mental health or special infirmity of an alleged offender or witness;

(iii) the staleness of the alleged offence;

(iv) the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);

(v) the likely effect of a prosecution on public order and morale;

(vi) the obsolescence or obscurity of the law;

(vii) whether the prosecution would be perceived as counter-productive (such as by making a "martyr" of an alleged offender or by providing publicity to an alleged hate propagandist);

(viii) the availability of efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;

(ix) the prevalence of the alleged offence and any related need for deterrence;

(x) whether the consequences of any resulting conviction would be unduly harsh or oppressive;

(xi) any entitlement of the State or other person to compensation, reparation or forfeiture if prosecution action is successful;

(xii) the attitude of the victim of the alleged offence to a prosecution;

(xiii) the likely length and expense of a trial;

(xiv) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

(xv) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;

(xvi) the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice;

(c) the factors which are to be excluded from consideration in determining whether the public interest requires a prosecution, include:

(i) the alleged offender's race, religion, sex, national origin, political associations, or beliefs;

(ii) the prosecutor's personal feelings concerning the victim or the alleged offender;

(iii) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

(iv) the possible effect on the personal or professional circumstances of those responsible for the prosecution decision;

(d) where the prosecutor decides not to undertake or to stop a prosecution by reason of a public interest factor such as those mentioned in (b), a notation of this decision be placed in the file relating to the case in question;

(e) the Solicitor General bring the foregoing public interest factors relevant to the prosecution of offences to the attention of police forces operating within the province.

Response:

The Government accepts this recommendation.

The Attorney General will issue a policy reflecting Recommendation 38, with respect to the public interest factors to be considered by the Crown prosecutor when determining whether an otherwise well-founded prosecution should not proceed. This policy is based upon the views expressed by Lord Shawcross subsequently endorsed by his successors in the office of Attorney General, England and Wales:

> It has never been the rule in this Country -- I hope it never will be -- that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should . . . prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a character that prosecution in respect

thereof is required in the public interest'. That is still the dominant consideration.

The Solicitor General will provide copies of this policy to all police forces in the Province.

39. Disclosure by Crown

We recommend that the Department of Attorney General of Nova Scotia urge the Federal Government to implement amendments to the Criminal Code *of Canada as follows:*

1. A justice shall not proceed with a criminal prosecution unless he is satisfied:

(a) that the accused has been given a copy of the information or indictment reciting the charge or charges against him in that prosecution; and

(b) that the accused has been advised of his rights to disclosure.

2(1) Without request, the accused is entitled, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:

(a) to receive a copy of his criminal record;

(b) to receive a copy of any statement made by him to a person in authority and recorded in writing or to inspect such a statement if it has been recorded by electronic means; and to be informed of the nature and content of any verbal statement alleged to have been made by the accused to a person in authority and to be supplied with any memoranda in existence pertaining thereto;

(c) to inspect anything that the prosecutor proposes to introduce as an exhibit and, where practicable, receive copies thereof;

(d) to receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness or anyone who may be called as a witness, and recorded in writing or, in the absence of a statement, a written summary of the anticipated testimony of the proposed witness, or anyone who may be called as a witness;

(e) to receive any other material or information known to the Crown and which tends to mitigate or negate the defendant's guilt as to the offence charged, or which would tend to reduce his punishment therefore, notwithstanding that the Crown does not intend to introduce such material or information as evidence;

(f) to inspect the electronic recording of any statement made by a person whom the prosecutor proposes to call as a witness;

(g) to receive a copy of the criminal record of any proposed witness; and

(h) to receive, where not protected from disclosure by the law, the name and address of any other person who may have information useful to the accused, or other details enabling that person to be identified.

2(2) The disclosure contemplated in subsection (1), paragraphs (d), (e) and (h) shall be provided by the Crown and may be limited only where, upon an inter partes *application by the prosecutor, supported by evidence showing a likelihood that such disclosure will endanger the life or safety of such person or interfere with the administration of justice, a justice having jurisdiction in the matter deems it just and proper.*

2(3) Subsection (1) imposes a continuing obligation on the prosecutor to disclose the items as above provided.

2(4) A statement referred to in sub-paragraph (b), (d) or (f) of subsection (1) does not include a communication that is governed by the "Invasion of Privacy" provisions of the Criminal Code.

3. Where a justice having jurisdiction in the matter is satisfied that there has not been compliance with the provisions of subsections 2(1) and 2(2) above, he shall, at the accused's request, adjourn the proceedings until, in his opinion, there has been compliance, and he may make such other order as he considers appropriate in the circumstances.

Response:

The Government accepts the intent of this recommendation.

There are doubts as to whether the proposed amendments will guarantee the desired results. However, this matter will be placed on the agenda of a future meeting of Federal/Provincial/Territorial Attorneys General and Ministers of Justice for their consideration.

40. Application to limit disclosure

We recommend that no application to limit disclosure be made without the prior written approval of the Director of Public Prosecutions or a Deputy Attorney General.

Response:

The Government accepts this recommendation.

Regional Crown Prosecutors or the Director of Public Prosecutions must approve a withholding of information by the Crown.

41. Interim policy on disclosure

We recommend that until the proposed statutory amendments to the Criminal Code *are effected, the Attorney General adopt and implement as a matter of policy the duties of disclosure reflected in the preceding recommendation.*

Response:

The Government accepts this recommendation.

The Attorney General has required Crown prosecutors to disclose information to the defence since 1980. The current disclosure guidelines were enacted in July 1988 and have been favourably commented upon by Professor Archibald. However, in light of the Commission's research and Recommendation 39, these guidelines have been revised and the Attorney General has promulgated new disclosure guidelines, which have been forwarded to all Crown prosecutors and which will be published. The following matters have been included in the new policy:

- disclosure will include the names and addresses of potential witnesses balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice.

- the continuing obligation upon the Crown to make the accused aware of the existence of evidence which the Crown believes is otherwise relevant to the guilt or innocence of the accused, but not to evidence which will be called in rebuttal.

42. Police duty to disclose

We recommend that:

(a) the Solicitor General inform police forces operating within the province of the Attorney General's directive on disclosure and require compliance with its principles in relations between police and prosecutors;

(b) the Solicitor General ensure that continuing police training includes information on the necessity of compliance with disclosure policy.

Response:

The Government accepts this recommendation.

The Solicitor General will develop policy for police forces in Nova Scotia which will require them to comply with the spirit and letter of the Crown's disclosure guidelines. Cooperation of the police is essential if full disclosure is to be provided by the Crown to the accused.

The Solicitor General will take steps to ensure police training includes instructions on the necessity for full compliance with the Crown disclosure policy.

43. Plea discussions and agreements

We recommend that the existing policy directive on plea discussions and plea agreements be revised to clearly set out the basis for the exercise of discretion by Crown prosecutors in this area, and that such directive in particular set out the governing principles of openness, voluntariness, accuracy, appropriateness and equality.

Response:

The Government accepts this recommendation.

The Department of the Attorney General is revising its policy directive on negotiations with the defence concerning plea and sentence. The revised policy directive will set out the governing principles of openness, voluntariness, accuracy, appropriateness and equality.

44. Summaries to trial judges

We recommend the abolition of summaries to trial judges and the abolition of the practice of providing trial judges with copies of preliminary inquiry transcripts.

Response:

The Government accepts this recommendation.

The Attorney General accepts that the practice of providing trial judges with copies of the preliminary inquiry transcript ought to be abolished. Federal legislation to amend Section 551 of the Criminal Code will be required to implement this recommendation. The Attorney General will ask the Federal Minister of Justice to introduce legislation to do this.

The practice of the Crown prosecutor providing the trial judge in a jury case with a summary of fact and law in this Province has been encouraged by the judiciary. The Chief Justice of the Trial Division of the Supreme Court of Nova Scotia will be consulted as to whether, in light of the research findings of the Royal Commission, this practice should be discontinued. In the meantime, as instructed in July 1988, prosecutors will ensure that a copy of the summary is provided to the defence, and the defence continues to have the opportunity to take issue with the contents.

45. Regional prosecuting officers

We recommend that a system of chief prosecuting officers for each region be adopted in order to create an effective middle level of management in Nova Scotia's prosecution service.

Response:

The Government accepts this recommendation.

In December 1989, four regional prosecuting officer positions were established by the Department of the Attorney General. Competitions for these four positions are currently under way.

Police and Policing

46. Police Commission resources and staffing

We recommend that the Police Commission be provided with sufficient resources to enable it to fulfill properly the leadership, training, information and assessment roles that constitute its mandate. Such resources should include funding for:

(a) restoring the position of Chairman of the Police Commission to a full time position;

(b) the appointment of four part time Commissioners who are broadly representative of community and public interest in policing;

(c) the appointment of an experienced Executive Director whose responsibilities will include Research, Information and Statistics; Training and Personnel Development; Advisory Services; and Security.

Response:

The Government accepts the intent of this recommendation.

The Government is currently reviewing the structure of the Nova Scotia Police Commission to determine the most effective mechanism for the delivery of policing services. Government is committed to dedicating the resources required for this purpose.

47. Assessment of municipal police departments

We recommend that the Police Commission conduct regular assessments of the operations of each municipal police department in accordance with the provisions of the Police Act.

Response

The Government accepts this recommendation.

Regular assessments of the operation of police departments are required to ensure a minimum standard of law enforcement across the Province. Although such assessments have been conducted by the Police Commission under provisions of the Police Act, the frequency and comprehensiveness of these inspections have been limited by resource constraints.

48. RCMP input to Police Commission

We recommend that the Solicitor General require the RCMP to provide information concerning RCMP operations in the province to the Police Commission on an ongoing basis so the Commission can develop and plan rational policing policy and an adequate police information system in the province.

Response:

The Government accepts the intent of this recommendation.

The RCMP currently provides the Department of Solicitor General with information about its operations required for the development of policing policy and through the appointment of an Executive Director (Policing) the Department will develop the appropriate communication with the Nova Scotia Police Commission.

49. Funding for policing

We recommend that the Police Commission develop and maintain close liaison with officials in the Department of Municipal Affairs and the Executive of the Union of Nova Scotia Municipalities with a view to developing a more rational basis for provincial financial assistance for municipal policing services.

Response:

The Government accepts this recommendation.

The Department of the Solicitor General maintains close liaison with officials of the Department of Municipal Affairs regarding these matters. Existing arrangements for the provision of policing services are now under review.

50. Independence of Police Commission

We recommend that the Police Commission not be absorbed into the mainline structure of the Solicitor General's Department to keep it relatively independent of political considerations and to better reflect the municipal-provincial partnership that characterizes the Nova Scotia organization of policing services.

Response:

The Government accepts this recommendation.

51. Executive Director (Policing)

We recommend the establishment within the Solicitor General's Department of an Executive Director (Policing) to reflect its increasing role in policing in the province.

Response:

The Government accepts this recommendation.

The position of Executive Director, Policing Services within the Department of the Solicitor General will serve as a focal point for all policing matters. The Executive Director will facilitate the development of provincial law enforcement policy and ensure the delivery of uniform services by the RCMP and municipal police forces. Immediate steps will be taken to establish this position.

52. Liaison with boards of police commissioners

We recommend that a regular annual meeting be held by the police Commission with the chairs of all Nova Scotia boards of police commissioners. The purpose would be to provide a forum for information exchange, program development and possible collaboration among municipal police departments in various matters, from equipment to crime prevention.

Response:

The Government accepts this recommendation.

Regular meetings of the local Boards of Police Commissioners will serve a useful purpose.

53. Independence of Police Review Board

We recommend that the Chairman of the Nova Scotia Police Commission not act as the Registrar of the Police Review Board, and that the Nova Scotia Police Commission not provide investigative services to the Police Review Board.

Response:

The Government accepts the intent of this recommendation.

The Department of the Solicitor General will consider the feasibility of providing the Police Review Board with its own administrative and investigative staff.

54. Independence of police forces

We recommend that the Police Act be amended to make it clear that it is unlawful for anyone other than a police officer of the same force to issue any order, direction or instruction to any member of a police force relative to his/her duties as a member of the force, except when communicating a decision of the force's lawful governing authority, and that a governing authority shall only issue such order, direction or instruction to the Chief or someone who is acting in his or her stead.

Response:

The Government accepts the intent of this recommendation.

Guidelines regarding the proper role and responsibilities of local Boards of Police Commissioners have been adopted by most municipalities. There is agreement that these police governing authorities should not interfere with the day-to-day activities of their police forces. Government will review existing legislation to ensure provisions are adequate.

55. Minority recruitment

We recommend that the recruitment of visible minority group members be actively encouraged by both police and governing authorities. Both the RCMP and municipal police departments in the province should establish specific recruitment targets which reflect the distribution of the visible minority groups in the population.

Response:

The Government endorses this recommendation.

The Department of the Solicitor General will work with the RCMP, municipal police forces, and police governing authorities to this end.

56. Outreach recruitment

We recommend that particular attention be given to using outreach recruitment methods (for example, having visible minority officers involved in recruitment; building up contact with minority communities to facilitate recruitment). The guidelines prepared by the Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Groups on the recruitment and selection of visible minority police officers should be circulated to all relevant police organizations in the province.

Response:

The Government endorses this recommendation.

These guidelines are now being reviewed by the Department of the Solicitor General and appropriate guidelines will be distributed in Nova Scotia.

57. Minorities in management positions

We recommend that action be taken to get members of visible minorities into police management positions.

Response:

The Government endorses this recommendation.

Determination of the appropriate plan of action will require input from minority representatives and police administrators. The Department of the Solicitor General will undertake to coordinate these consultations.

58. Minority/police relations

We recommend that the Nova Scotia Police Commission take a strong leadership role in police/visible minority relations by providing useful materials to departments (comparable in quality to those now made available to its officers by the RCMP), arranging imaginative in-service training in conjunction with the Atlantic Police Academy or similar bodies, and assisting departments in the setting up of race relations liaison officers or committees.

Response:

The Government endorses this recommendation.

59. Access of minorities to police

We recommend that, together with the Nova Scotia Police Commission, municipal police departments and local boards of police commissioners develop imaginative outreach programs and liaison roles in order to provide visible minorities with greater access to and more positive interaction with the police.

Response:

The Government accepts this recommendation.

Several initiatives have been undertaken to provide minorities with greater access to the police. The RCMP have commenced consultations with Native leaders with a view to establishing advisory committees at the reserve and provincial levels. A plan to establish satellite offices on reserves has also been developed. The Department of the Solicitor General will consult with municipal departments, the RCMP and minority groups to develop a provincial strategy for enhancing police minority relations.

60. Discrimination in police departments

We recommend that municipal police departments adopt as an objective the eradication in police departments of racial slurs and stereotyping, and in pursuit of this objective promulgate official policies and guidelines on stereotyping similar to those currently employed by the RCMP (RCMP Administration Manual 111.9) or the Metropolitan Toronto Police Force (standing order number 24).

Response:

The Government accepts this recommendation.

Official policy and guidelines on racial stereotyping will be promulgated by the Province and distributed to all police forces.

61. Training

We recommend that special attention be given to more intensive training for cadets whose first assignment will be in areas of high visible minority concentration. In addition, detachments and municipal police departments located in areas of high visible minority concentration should allocate proportionally more of their resources to multicultural and race relations training. The Police Commission should monitor detachment and municipal police department performance in this area.

Response:

The Government accepts this recommendation.

62. Sensitivity to minority concerns

We recommend that education and sensitivity training with respect to visible minorities be more pronounced in the cadet training curriculum and should be a component of regular in-service training.

Response:

The Government accepts this recommendation.

63. Atlantic Police Academy programs

We recommend that the Atlantic Police Academy be encouraged to continue to develop in-service programs and imaginative experimental initiatives for police/visible minority interaction.

Response:

The Government accepts this recommendation.

64. Guidelines on other than full time personnel

We recommend that guidelines be developed by the police Commission with respect to the use by municipal police departments of part time, volunteer and auxiliary personnel.

Response:

The Government accepts this recommendation.

Guidelines have been prepared and are now under review.

65. Promotion guidelines

We recommend that routine promotion guidelines be established in all municipal police departments. In all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants should be required.

Response:

The Government accepts this recommendation.

The Nova Scotia Police Commission has established standards for promotional routines and participates in them.

66. Selection of chief of police

We recommend that in all but the largest municipal police departments the involvement of the Police Commission and/or outside consultants be required in the selection of the chief of police.

Response:

The Government accepts the intent of this recommendation.

The Province will consult with the Union of Nova Scotia Municipalities, the Nova Scotia Chiefs of Police Association and the municipal boards of police commissioners regarding an appropriate selection process for all chiefs of police.

67. Supervisory and management training

We recommend that more training be provided for those promoted to supervisory and management positions in the municipal police departments. Training in courses on supervision and executive development should accompany such promotion.

Response:

The Government accepts this recommendation.

The Solicitor General's Task Force on Municipal Police Training has developed a minimum compulsory training program which specifies appropriate training courses for each rank within municipal police forces. The program will be incorporated in regulations under the Police Act.

68. Monitoring of training

We recommend that the Solicitor General's Task Force on Municipal Police Training, as well as the data collected as part of the Police Study for this Report, be used to establish an ongoing system for monitoring levels of training in the province. The system should be maintained by the Police Commission or equivalent body and should incorporate clear definitions of the types of training appropriate for the needs of particular members, departments and detachments.

Response:

The Government accepts this recommendation.

The Task Force on Municipal Police Training has established an ongoing system for monitoring levels of police training in the Province. Maintenance of this system will require enhanced resources.

69. Assessment of police officers

We recommend that periodic assessment of municipal police department officers be carried out as in Nova Scotia's recently announced "force continuum program" which deals with the use of firearms and mace. Common standards should be developed for certification in these areas and consideration should be given to the inclusion of physical fitness and basic response/preliminary investigation imperatives.

Response:

The Government accepts this recommendation.

The Police Act requires that police officers requalify in the competent use of firearms every two years and in the use of mace every three years. The minimum compulsory training program developed by the Minister's Task Force on Municipal Police Training will specify appropriate training courses for each rank within municipal police forces, and will detail requalification standards for a variety of policing skills.

70. Investigative skills

We recommend that all constables be required to have basic investigative skills such as would be required to secure the crime scene and carry out proper preliminary recording and investigation.

Response:

The Government accepts this recommendation.

This will be incorporated in the minimum compulsory training standard developed by Solicitor General's Task Force on Municipal Police Training.

71. Guidelines for investigations

We recommend that municipal police departments cooperate with the Police Commission to produce a uniform set of guidelines for investigative work.

Response:

The Government accepts this recommendation.

A minimum standard of law enforcement service must be guaranteed to all Nova Scotians. To accomplish this objective, the following components must be put in place:

(a) development of uniform policy and procedure;

(b) provision of appropriate training programs; and

(c) monitoring of police performance.

Development of comprehensive policies and procedures will require input from police professionals as well as community representatives. The Solicitor General views this as a matter of high priority and will ask the new Executive Director, Policing Services to coordinate this initiative as a priority matter.

72. Evaluation of investigative capabilities in police departments

We recommend that the Police Commission undertake a systematic evaluation of the investigative capacities available in all municipal police departments in the province. This evaluation should be coordinated with periodic reviews of the municipal police departments.

Response:

The Government accepts this recommendation.

The development and implementation of uniform policies and procedures will be a first step in promoting a standard quality of policing service across the Province. Periodic assessments to ensure that established standards continue to be met will be carried out as part of this policy.

73. Directive on investigation of murder/attempted murder

We recommend that the current standing directive on municipal police department responsibilities for the investigation of murder and attempted murder be regarded as a flexible directive which may change to reflect alterations in municipal police department investigative capacities. This may involve broadening the scope of exemptions, or it may lead to the inclusion of other serious crimes in the list of offences which some municipal police departments may not be able to handle.

Response:

The Government accepts this recommendation.

The Department of the Solicitor General, in consultation with the RCMP and municipal forces, will review the current directive.

74. Interviewing juveniles and the mentally unstable

We recommend that in cases where suspects and/or witnesses are juveniles or mentally unstable, investigating officers make special efforts to ensure they are treated fairly. Supportive persons from the witness/suspect viewpoint should be present during interviews.

Response:

The Government accepts this recommendation.

A Committee composed of representatives from the Departments of Attorney General, Community Services and Solicitor General and the Canadian Association for Community Living has been established to develop a protocol for dealing with victims or witnesses with special needs during their involvement with the criminal justice system.

75. Recording police interviews

We recommend that audio-visual recording of police interviews of chief suspects and witnesses in serious crimes such as murder, and of juveniles and other interviewees who may be easily influenced, be encouraged.

Response:

The Government accepts this recommendation.

Implementation will begin with a pilot project after consultation with police authorities.

76. Internal review of investigations

We recommend that it be standard practice in all police departments for superiors to review, with investigators, the progress of investigations of all serious offences.

Response:

The Government accepts this recommendation.

See response to Recommendation 71.

77. Delivery of policing services

We recommend that a joint task force be established by the Solicitor General and the Minister of Municipal Affairs, with representation from the other relevant bodies, to examine the organization and delivery of policing services within the province, and in particular, to consider and review the desirability and feasibility of some regionalization of existing municipal policing services in the province, and to make recommendations to the Government on these matters. Such a review should also examine other less comprehensive collaborative arrangements which might beneficially be established or further developed between existing municipal police forces and the RCMP to improve the quality and efficacy of the delivery of policing services in the province.

Response:

The Government accepts this recommendation.

To address the quality and efficiency of the delivery of policing services, the Solicitor General has and will continue to participate in the Provincial-Municipal Fact Finding Committee on Municipal Reform. This is a joint committee of the Government and the Union of Nova Scotia Municipalities.

78. Minimum standards for policing

We recommend that all municipal police departments be able to deliver police services according to a set of minimum standards for policing in Nova Scotia. This set of standards should be developed by the Police Commission with appropriate input from both provincial (Solicitor General) and municipal (local police commissions) governing authorities. Recognizing that the primary responsibility for delivery of police services is with the municipalities and that it may be beyond the financial capability of some to upgrade their municipal police department according to these minimum standards, the Province must ensure that the municipal police departments have the resources to meet the prescribed standards.

Response:

The Government accepts the intent of this recommendation.

A set of standards will be developed by the Police Commission in consultation with provincial and municipal governing authorities.

79. Departmental plans

We recommend that municipal police departments establish departmental plans which include a clear definition of departmental goals and priorities, and appraisal systems for evaluating job performances.

Response:

The Government accepts this recommendation.

The Department of the Solicitor General, through the position of Executive Director, Policing Services, will assist municipal police departments in formulating departmental plans.

80. Management systems

We recommend that priority be given to improving police management systems among the municipal police departments, focusing on greater communication, feedback and accountability among departmental members.

Response:

The Government accepts this recommendation.

This will be incorporated in departmental plans and uniform policies and procedures.

81. Code of ethics

We recommend that municipal police departments be encouraged to develop a code of ethics as positive guidelines for behaviour. For purposes of continuity and consistency and for minimum standardization, such codes should be developed in consultation with the Atlantic Police Academy and the Police Commission.

Response:

The Government accepts this recommendation.

82. Reinvestigations

We recommend that guidelines be developed by the Solicitor General and Attorney General Departments detailing procedures to be followed where it is necessary for there to be a reinvestigation of the work of a police force. Any such reinvestigation of the work of a municipal police department should be conducted by the RCMP, with out-of-province assistance if required. All reinvestigations should be thoroughly reviewed by the Department of Attorney General.

Response:

The Government accepts this recommendation.

SUMMARY OF THE RESPONSE OF THE GOVERNMENT OF NOVA SCOTIA TO THE RECOMMENDATIONS OF THE ROYAL COMMISSION ON THE DONALD MARSHALL, JR. PROSECUTION

In this document the Government of Nova Scotia responds to the recommendations of the Royal Commission on the Donald Marshall, Jr. Prosecution and announces further initiatives to improve the justice system for all Nova Scotians and for visible minorities in particular.

RECOMMENDATIONS

The Royal Commission made 82 recommendations:

- 1 pertains directly to Donald Marshall, Jr.;
- 7 deal with the wrongfully convicted;
- 11 with visible minorities generally;
- 11 with Micmac and the criminal justice system;
- 4 with Blacks and the justice system;
- 11 with the responsibilities of the Attorney General, Solicitor General and police authorities; and
- 37 with policing in particular.

RESPONSE

All recommendations that are the responsibility of the Government of Nova Scotia are accepted.

Where a recommendation is not within the Government's jurisdiction, it "endorses" the recommendation and, where applicable, promises support.

No recommendations are rejected.

CONTEXT OF RESPONSE

The justice system is fundamental to democratic government.

Since the early 1980's the justice system in Nova Scotia has been under intense public scrutiny.

The Royal Commission examined the justice system of the 1970's and early 1980's in the context of what it refers to as the "unique case" of Donald Marshall, Jr. It found a flawed structure, inadequate training, and confusion over responsibilities at senior levels.

It found that Donald Marshall's innocence might have been revealed by any one of the numerous checks and balances in the system but each failed to protect him.

Much of what plagued Donald Marshall, Jr. through his ordeal can be traced to complacent faith in the justice system. The system worked well enough most of the time and this created the impression that it worked all of the time.

The faith we seek to restore is tempered by the realization that mistakes will be made. It is not enough to say that mistakes are inevitable. They are, but they need not inevitably lead to wrongful convictions. The justice system we are building today must provide every possible opportunity for mistakes to be discovered and addressed.

JUSTICE REFORM TO DATE

Responsibility for the various aspects of the criminal justice system is distributed among the three levels of government.

The Government of Nova Scotia began the massive job of renewing the portions of the justice system within its jurisdiction in 1986 when, on October 28, 1986 -- less than a month after the courts had finally dealt with the Roy Newman Ebsary conviction -- the Government appointed the Marshall Commission.

At the same time the Government began work on other aspects of the justice system including:

1. Creation of the Solicitor General's Department in order to separate the police and prosecution functions and to provide greater impetus to improve policing.

2. Appointment of a Director of Public Prosecutions to ensure that all Nova Scotians, regardless of influence, race, gender or political affiliation, will be dealt with fairly and evenhandedly.

3. Establishment of the Victims' Services Division in the Department of Attorney General – part of a commitment to make the justice system more humane (further initiatives in the area of domestic violence and child sexual abuse are in the planning stage).

4. Introduction of a Fine Options Program by the Solicitor General's Department and new fine collection procedures to ensure that no one who cannot pay a fine goes to jail and no one who will not pay a fine goes unpunished.

5. Establishment of the Court Structure Task Force to make the court system more accessible, understandable and efficient.

6. Improvements in the prosecution service: additional prosecutors; creation of Regional Crown Prosecutors; and the conversion of full-time prosecution positions to Civil Service status, so hiring is based on merit.

7. Establishment of a working relationship between the Government and Micmac leaders.

8. Establishment of the Solicitor General's Task Force on Municipal Police Training.

9. Establishment of the Police Review Board, an independent quasi-judicial body to hear citizen complaints against the police.

As the next phase of justice reform, the Government now turns to the Commission's recommendations.

Perhaps the best proof of the desire to adapt and improve the system of justice is that 30 of the Commission's recommendations were suggested by counsel for the Attorney General's Department. In other words, the Government has initiated change, not resisted it.

OVERVIEW OF THE GOVERNMENT'S RESPONSE

Righting the Wrong: Dealing with the Wrongfully Convicted

The Commission proposes formal, national structures for the reinvestigation of wrongful convictions and compensation for the wrongfully convicted. It recommends the Nova Scotia Government initiate discussions with the Federal Government. The Attorney General has written to all Federal/Provincial/Territorial Attorneys General and Ministers of Justice expressing the Government's desire to discuss the independent review mechanism recommended by the Commission. In the meantime, the procedures that can be implemented informally by a province will apply in Nova Scotia.

Compensation to Donald Marshall, Jr.

The Government has asked the Honourable Mr. Gregory T. Evans, Q.C., one of the Marshall Commissioners, to re-examine compensation. Counsel for Mr. Marshall and the Attorney General have agreed to cooperate to achieve a just and expeditious result. Both sides hope to avoid adversarial bargaining.

Visible Minorities in the Criminal Justice System

The Government commits to the following fresh initiatives to combat racism.

1. A Cabinet Committee on Race Relations chaired by the Premier and composed of senior Ministers including the Attorney General and Solicitor General to oversee minority initiatives and coordinate them with groups affected.

2. Establishment of a Race Relations Division of the Human Rights Commission and consultations on possible improvements to the Commission and the Act.

3. Development of policies that will improve relations between justice personnel and minorities through education and affirmative action.

4. Implementation of fine option programs in minority communities so that the economically disadvantaged will not suffer undue hardship from the imposition of fines.

5. Increased financial support for Nova Scotia Legal Aid to allow it to engage Native and Black case workers and a social worker.

Micmac and the Justice System

The Commission determined that many of the difficulties Micmac encounter with the justice system are rooted in social, political and economic structures outside the justice system and are not the result of any evil intention to discriminate by justice personnel. The Commission also notes that Nova Scotia does not exhibit the same degree of over-representation of Native offenders in jails which is experienced in western Canada. This suggests that the situation here differs, to a degree at least, from that found in other provinces. Hence the need for pilot projects and close consultation between both levels of government and the Micmac communities to develop those programs which will work most effectively in Nova Scotia. There are no ready made solutions.

What is apparent is that, as the dominant culture has intruded upon Micmac communities, community life has suffered. A community court developed in close cooperation with the Micmac seems an attractive method of restoring social control mechanisms. However, like the Commission, the Government does not favour an autonomous Native legal system for Nova Scotia Micmac. It believes that the system can be adapted to serve Native communities.

Central to the Government's response to the Micmac issues is the Tripartite Forum bringing together Micmac leaders, and the Federal and Provincial Governments. The Government believes that practical solutions to problems experienced by Micmac can be found through discussion. It is anticipated that the first item on the agenda of the Forum will be justice issues, specifically the recommendations of the Marshall Commission. It is also hoped that, through the Forum, justice committees can be established in Native communities throughout the Province. The Government believes that Native justice committees can facilitate communication between the communities and the justice institutions that are intended to serve them, such as parole, fine options and alternative measures.

Blacks in the Criminal Justice System

In addition to the initiatives referred to earlier in respect of visible minorities, the Attorney General will ask the Nova Scotia Legal Aid Commission to re-examine its structure and funding to determine whether minority clients can be better served. Government has recently approved funding for a new Legal Aid office in Westphal which will improve access for clients, particularly residents of the Black communities in the area.

Administration of Criminal Justice

The Commission determined that influential people under investigation did not interfere in the administration of justice and that the differences in treatment they

received "had more to do with form and process than substance but . . . contributed greatly to a widespread public perception that there is a separate system of justice . . ." (p. 228)

The Government recognizes that it is difficult for justice personnel to deal with investigations and prosecutions of those in authority over them. No one should feel they risk their career in order to do their job impartially. For this reason the Government has created the position of Director of Public Prosecutions. The Commission reached the same conclusion.

Likewise, the Commission accepted the position of the Department of Attorney General that responsibility for initiation of investigations and laying charges rests with the police, not the Attorney General. The Government accepts that confusion continues in this regard, even among some members of the legal community, and therefore will issue the policy statements recommended by the Commission.

Nova Scotia continues to lead the other provinces on the matter of disclosure. The Attorney General has required Crown prosecutors to disclose information to the defence since 1980. The current disclosure guidelines were enacted in July 1988 and have been favourably commented upon by Professor Bruce Archibald, a consultant engaged by the Royal Commission. The Department recognized some time ago that timely and complete disclosure might have prevented the conviction of Donald Marshall, Jr. As a result of the Commission's findings the Attorney General's disclosure directives will be updated. The Attorney General will discuss amendments to the Criminal Code proposed by the Commission with his federal/provincial/territorial counterparts.

Police & Policing

The Commission recommended that the Province assert greater leadership in law enforcement. Government is committed to providing the necessary resources to establish an appropriate structure for the delivery of policing services in the Province. The Department of the Solicitor General will appoint an Executive Director of Policing Services to serve as a focal point for all policing matters. Government is currently reviewing the structure of the Nova Scotia Police Commission to determine how it can perform its role more effectively.

As stated by the Commission, training practices have dramatically improved since 1971. With the 1985 amendments to the Police Act, which prescribed more stringent training standards, and the appointment of the Solicitor General's Task Force on Municipal Police Training, the Government has acknowledged its commitment to improving training for municipal police officers in Nova Scotia. A high priority will be placed on the development of sensitivity training programs relating to visible minorities and the provision of these programs to cadets and members on a compulsory basis.

The Commission was critical of flawed procedures which were used by police during the original investigation of the Marshall case and in subsequent re-investigations.

The Department of the Solicitor General is committed to ensuring that an appropriate standard of law enforcement services is provided to all Nova Scotians. In consultation with the Nova Scotia Police Commission, the R.C.M.P., and municipal police forces, uniform policy and procedures governing all aspects of policing will be developed. Implementation of these standards will be monitored through a program of ongoing assessments.

The Commission recommended that Government undertake a number of initiatives to ensure that the justice system is responsive to the unique needs of visible minorities. The Department of the Solicitor General accepts these recommendations. Minority sensitization training programs for police officers will be improved and expanded. The Department will consult with visible minority groups to identify the most effective strategies for recruiting more blacks and natives to serve as police officers. The establishment of local advisory boards will provide a vehicle for improving access of blacks and native communities to the justice system.